

SUBMISSION
to the
PARLIAMENT of VICTORIA
Family and Community Development Committee
(Chair: Ms Georgie Crozier, M.L.C.)

INQUIRY into the HANDLING of CHILD
ABUSE by RELIGIOUS and OTHER
ORGANIZATIONS

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And Jesus called a little child to him, set him in their midst and said,

“Amen, I say to you, unless you turn and become like little children, you will not enter the kingdom of heaven. Whosoever, therefore, humbles himself as this little child, he is the greatest in the kingdom of heaven.

“And whoever receives one such little child for my sake, receives me. But whosoever causes one of these little ones who believes in me to sin, it were better for him to have a great millstone hung around his neck, and to be drowned in the depths of the sea. Woe to the world because of scandals! For it must needs be that scandals come, but woe to the man through whom scandal does come!

“....See that you do not despise one of these little ones; for I tell you, their angels in heaven always behold the face of my Father in heaven. For the Son of Man came to save what was lost.”

Gospel of Matthew, Chapter 18, verses 2 – 7, 10 – 11.

30th August, 2012

Ms. Georgie Crozier, M.L.C.

Chair, Family and Community Development Committee,

Parliament of Victoria,

Spring St., MELBOURNE, 3000

Dear Ms. Crozier,

This submission responds to your public invitation recently published in Melbourne's newspapers. Though informed by my work with the following organizations and agencies, it is made in an individual capacity independent of my current membership of them, and nor does it in any way represent their views:

- Chair of **Religions for Peace Australia**
- Co-president of **Religions for Peace Asia** (moderator, Professor Din Syamsuddin, head of Muhammadiyah, Indonesia)
- **Catholic Council for Pastoral Research** of the Australian Catholic Bishops' Conference (Chair, Bishop Julian Porteous)
- **Ecumenical and Interfaith Commission**, Catholic Archdiocese of Melbourne (Chair, Very Rec. Denis Stanley)
- Board of the **Australian Multicultural Community Services** (chair, Mr Russell Howard)
- Member of the **Multifaith Advisory Council of Victoria Police** (chair, Commander Ashley Dickinson)

It is my understanding that none of these organizations will be making a submission, including Victoria Police.

In assessing the credibility of this submission, it is important for the committee to know that I am a trained social and educational psychologist, especially in the area of cross-cultural psychology and second language acquisition as well as immigrant and multicultural studies. I am also a highly trained social science and educational researcher with a national and international reputation skilled in gathering and assessing empirical data. More details about myself are available on the RMIT website.

As importantly, I was a Catholic priest in the Archdiocese of Melbourne who did four years of training at Corpus Christi College, Werribee (now Werribee Park) beginning in 1962 and four years at the Collegio De Propaganda Fide in Rome where in 1970 I graduated with the Licentiate (Masters) in Sacred Theology (S.T.L.) from the Pontifical Urban University. Ordained on August 22nd 1970, I served in the Catholic parishes of North Altona (1970 – 1974) and Thornbury (1974 – 1976) before doing a career switch into the university world, having worked at RMIT University since July 1979 after several years at Monash University. I am married with two adult daughters. On the Queen's Birthday 2010, I was awarded the O.A.M. for "services to intercultural education and to the interfaith

movement". I am also a Club Melbourne Ambassador and an Honorary Fellow of the Australian Council of Educational Leaders.

My resignation from the priesthood occurred 36 years ago in 1976. It gives me no joy, in light of subsequent events, to inform the Committee that in my letter of resignation from the Catholic priesthood written on 9th December, 1976 to Archbishop Sir Frank Little, I wrote, amongst other relevant comments, ".....my original analysis, agonizingly culled from my experience and my reading, is correct – a fundamental restructuring of the (priestly) ministry is demanded. Nothing has occurred to make me change my mind that the presbytery system is over-due for re-examination and reform for it is a system which is blunting the edge of priestly personality, stopping its growth in so many cases short of the potential of full maturity if not actually resulting in psychological breakdown manifestations. Nothing has occurred to make me change my mind that the clergy are unable to face up to their own problems, let alone to make a much-needed contribution to resolving the wider problems of Church and society".

I was never to be subsequently asked about these observations which had been previously documented to the archdiocesan and Vatican authorities in my application for laicization. However, to be fair, I never knew about any clerical child abuse issues at that time though history now shows that in three of the six contiguous parishes in my first parochial appointment three child abusers were in ministry. And in my second appointment, it has been accepted by the Melbourne archdiocese that my parish priest, now deceased, was a child abuser.

Since 9/11, my research has been heavily focussed around religious and interfaith issues. In 2004, together with Professor Gary Bouma (Monash University) and Dr Hass Dellal (Australian Multicultural Foundation), I was the chief researcher for the study, *Religion, Cultural Diversity and Safeguarding Australia* funded by the immigration department in Canberra – this examined Australia's response to 9/11 and the emergence of a multi-faith Australia. In 2011 the same research team produced a study for the Australian Human Rights Commission, *Freedom of Religion and Belief for 21st Century Australia* which examined, on the basis of public submissions and consultations with Australia's religious leaders, issues about freedom of religion in Australia and the separation of religion and state.

Given my expertise in interfaith affairs, it is logical for the Committee to inquire about child sexual abuse amongst the non-Christian religions, in particular, the largest groups, namely, the Buddhist, Islamic, Hindu, Jewish and Sikh groups in Australia. Nothing concrete has come to my attention except that in another state questions have been raised about one particular very large community of Buddhist monks and nuns, including some quite young adults. There have been issues in the Jewish community which will be separately brought to the attention of the Inquiry.

I am happy to give further advice or clarification to the Inquiry in whatever forum or context decided by your committee. My email is des.cahill@rmit.edu.au and my mobile 0439 995 761.

Your task is considerable, and if done well and with courage, it will have ramifications well beyond Australian shores, so global is the issue. The global eye will be upon the work of FCDC. But this would not be the first time that Victoria has given a global lead on important social issues.

I wish you well in the task before you and your committee.

Yours Sincerely,

Desmond P. Cahill (Prof.)

Introduction

This submission to the Family and Community Development Committee of the Victorian Parliament, chaired by Ms Georgie Crozier, M.L.C., is made by Professor Des Cahill, Professor of Intercultural Studies within the School of Global, Urban and Social Studies, RMIT University.

By way of introduction, three observations are necessary. Firstly, whilst some of the following content refers to other religious organizations as do many of the recommendations, this submission will be primarily focused on the Catholic Church and its priesthood whose present crisis with the child sexual abuse issue is the overwhelming driver of this parliamentary inquiry. Secondly, the submission will attempt to be solution-focused as desired by the Inquiry. This is commendable though this raises the question: *to what extent and under what circumstances can a government in a civil democratic society intervene in the affairs of a religious organization without contravening the principle of freedom of religion as outlined under the Australian and Victorian constitutions and the various human rights covenants?* We shall address this issue in the following section as it is fundamental to the work of the inquiry.

This submission also will not be as much focussed on the victims; this is not because they, as victims, are not the most important part of this unfortunate saga, but because I am sure there will be other submissions which will have greater competence and better solutions than I can give regarding their situation.

Thirdly, the review of the literature and of the subsequent recommendations are clearly based, firstly, on my own professional knowledge and experience, on my deep knowledge of the Catholic Church both globally, nationally and locally and on my social science and psychological training. Secondly, the literature review has been influenced particularly by the three reports (2004, 2006, 2011) of the renowned John Jay Center for Criminal Justice within the City University of New York, commissioned by the USA Catholic Bishops. But, it is based most especially on the recently published study by Oxford University Press, *Child Sexual Abuse and the Catholic Church: Gender, Power and Organizational Culture* by Dr Marie Keenan, a family systems psychotherapist and an academic at the University College, Dublin, who has spent some time in Australia at the University of New South Wales. This is a tour de force and by far the most outstanding and compelling review of the issue with a careful culling and interpretation of the evidence and made unique and special by her in-depth interviews with nine abusing priests.

She urges “a new way of thinking about the clerical sexual offender as someone whose clerical masculine identity and way of “doing” priesthood or religious brotherhood is built on a life that is impossible to live” (Keenan 2012: xv). However, she does not draw on some unpublished thesis evidence, some of it debateable (see Appendix One for this list).

The Australian evidence comes principally from the publications of the globally key figure of Bishop Geoffrey Robinson, who resigned as the auxiliary bishop of Sydney after becoming disenchanted with the episcopal and papal handling of the child sexual abuse crisis. He himself was the victim of such abuse as a child, so his evidence has an additional poignancy. His book is *Confronting Power and Sex in the Catholic Church: Reclaiming the Spirit of Jesus* (John Garratt Publishing, 2007). The other main source is the doctoral canon law thesis of Sister Elizabeth Delaney, *Canonical implications of the response of the Catholic Church in Australia to child sexual abuse* (University of Ottawa – St Paul’s, 2004), who gives an overview of the episcopal response with increased usage of the church’s

penal and procedural law, identifying differences and problem areas over the years. Another important source is Chrissie Foster's gripping and poignant account (*Hell on the Way to Heaven*, Bantam, 2010) of the deaths of her two daughters after they were continuously abused by a parish priest who often made visits to the Werribee seminary during the 1960s with carloads of young altar boys and girls as part of the grooming process – little did we young seminarians know what was really happening!

Because this is a submission rather than a formal academic paper, it will not be fully referenced according to the normal conventions though a key source is the Keenan study and full acknowledgement is given by this submission to her and her work.

Government Management of Religion and Religious Diversity

Australia as a culturally diverse society is a multifaith nation where there is freedom of religion and belief and, as enshrined in the Australian Constitution, the separation of religion and state. Thus, a critically important and underpinning question governing the work of the Inquiry and its recommendations is, as previously articulated, this: *to what extent and under what circumstances can a government in a civil democratic society intervene in the affairs of a religious organization without contravening the principle of freedom of religion as outlined under the Australian and Victorian constitutions and the various human rights covenants?*

The first thing to note in answering this question is that there is no reference to the separation of religion and state in the current Victorian Constitution which is in its 200th version following a further amendment on 13th October, 2011. The Constitution was initially drafted in Melbourne by Victoria's first Legislative Council in 1853-54. It was sent to England and approved by the British Parliament in 1855, and was proclaimed in Victoria on 23rd November 1855. On 22nd October 1975, the Constitution was proclaimed as an Act of the Parliament of Victoria, and was thus no longer an act of the British Parliament. The Constitution contains no reference to 'God', not even in the preamble, nor to 'church' nor to 'religion'. It contains one reference to 'spiritual' in reference to the Aborigines of Victoria. This would suggest that the Victorian government would have wide powers to intervene in the affairs of a religious body. At the same time, one must take note of the Australian Constitution which applies to all peoples in all States and Territories.

In the Australian context, the constitutional fathers took a minimalist approach to religion, not even defining it. In retrospect, this was probably very wise. Religion was defined (and defined badly in my view since it would exclude Buddhism and perhaps Confucian Humanism) in the 1981 High Court decision on the status of the Church of Scientology which was assessed to be a religion. Section 116 of the *Commonwealth of Australian Constitution Act* states that *The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.* Unlike France's extreme model, Australia, like Canada, has followed a more moderate model in the separation of religion and state. The Australian example contrasts with the French model of *laicite* and its "strongly positive commitment to exclude religion from State institutions and, in its place, to inculcate principles of nonreligious rationality and morality" (Beckford 2004: 32). Australia also contrasts with the USA model with its over-strict separation of religion and state. The Australian example is paralleled by the Canadian model with its evolution from the traditions of the *Ancien Regime* to a civic ethos underpinned by a technocratic and associational pluralism.

In Australia, the less than strict separation has been exemplified in the area of education which has always been the touchstone of interreligious relationships and the religion-state relationship, especially since the early 1970s when Commonwealth and later State funding was given to private religious schools. Since then there has been a repositioning of the religion-state relationship with a far greater intersection exemplified best by the funding of religious schools in which the federal and state governments stipulates what is to occur in legislative, regulatory and curriculum terms.

Other expressions of this repositioning have been

- the funding of part-time ethnoreligious schools to teach the language and perhaps religion of immigrant and refugee communities
- the funding of confessional universities such as the Australian Catholic University by the Commonwealth government
- the appointment of religious personnel as a governor-general and as State governors
- the funding of welfare officers for some of the more recently arrived groups such as the Muslim
- the inclusion of religious discrimination within the ambit of racial discrimination and human rights acts
- the listing of historic places of worship on the national register, and the allocation of funds for the restoration of historic churches
- the utilization of religious leaders for civic occasions such as at times of national celebration or of national and international times of tragedy
- the successful tendering by religious groups for the delivery of unemployment, health and welfare services as part of the privatization of government services and the winding back of the welfare state
- the appointment of chaplains to government and private schools
- the financial support by State and Federal governments for World Youth Day in Sydney in 2008 and interfaith events such as the Parliament of the World's Religions in Melbourne in December 2009
- the funding of interfaith projects, including the establishment of the National Centre for Excellence in Islamic Studies (University of Melbourne), through the Commonwealth Government's Living-in-Harmony and Australian Diversity programs

Whilst these developments would suggest strongly that Parliament has the power to intervene in the affairs of religious bodies, the other two relevant legal instruments are the international human rights instruments, notably, Article 18 of the *Universal Declaration of Human Rights* which affirms the "right to freedom of thought, conscience and religion", including the right to change one's religion or belief and the right to manifest one's "religion or belief in teaching practice, worship and observance" and, more importantly, Article 18 of the *International Covenant of Civil and Political Rights*.

The Importance of Article 18 of the International Covenant of Civil and Political Rights

The key parts of Article 18 of the ICCPR for our purposes are paragraphs three and four:

18 (3). Freedom to manifest one's religion or beliefs only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others

18 (4). The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own conditions

Australia is a signatory to the ICCPR. Accordingly, it is the argument of this submission that the Victorian Parliament would be exercising its historic responsibility to maintain every citizen's right to freedom of religion and belief if it required a religious organization to change a particular practice, policy or protocol or to remove an exemption if it can be demonstrated that the religious body and its religious personnel contravened the provisions made under Article 18 (3) of the ICCPR. This intervention would be allowable under the following context if a religious body

- created or allowed to occur a widespread situation whereby **public safety** was placed at risk by particular practices, policies or protocols of religious bodies
- created or allowed to occur a widespread situation whereby **the proper order** of the Victorian society was put at risk or damaged by particular practices, policies or protocols of religious bodies
- created or allowed to occur a widespread situation whereby **the health, physical or mental**, of its citizens or groups of citizens such as children was put at risk or significantly damaged by particular practices, policies or protocols of religious bodies
- created or allowed to occur a widespread situation whereby **the good morals** of its citizens or groups of citizens were put at risk or damaged by particular practices, policies or protocols of religious bodies
- allowed knowingly the infringement of **the fundamental rights and freedoms of others**, especially children, by particular practices, policies or protocols of religious bodies

Furthermore, in accordance with Article 18 (4), the State can act in situations where a particular practice, policy or protocol does not allow parents, or legal guardians, to ensure the moral education of their children by state agencies as in government schools or in private religious schools sponsored by faith bodies acting in place of and on behalf of parents in fulfilling the responsibility of the state to care for and educate the children of the State of Victoria.

In this context, it is important to note that freedom of religion and belief is not an absolute right as is made very clear in Article 18 (3) of the ICCPR. This is accepted by the Catholic Church. It is a relative right. The **Catholic Archdiocese of Sydney (submission no. 1932)** in its 20-page submission to the AHRC study (Bouma, Cahill, Dellal & Zwartz 2011), after arguing against any distinction between private belief and public action, acknowledged that religious freedom is not an unlimited right as many other religious leaders claim. This was a not very common admission in all the 2000+ documents submitted to the AHRC study – in fact, many submissions saw religious freedom as an absolute right. The Sydney submission also acknowledged that religions could be a threat to the fundamental rights and freedom of others but it worried about society's order of priority among rights.

Also almost uniquely, the Catholic Sydney submission had a section on “religion and the state”, acknowledging past failures of the church in overstepping the boundaries. It argued that civil society has precedence over the state which it serves. Its defence of the exemptions given to religious bodies under the equal opportunity legislation was based on this precedence of civil society over the state and on the right to religious freedom. And, in fact it wanted an extension of legislative exemptions. However, in this section, the Sydney archdiocesan submission never discussed the various models of

the relationship between religion and state and nor did it operationalize how these equal opportunity exemptions might be extended.

Accordingly, this submission argues that it is necessary and permissible in accordance with the various, state, federal and international legal instruments for the Parliament of Victoria to take legislative or regulatory or administrative action to continue to ensure (i) the public safety of its citizens (ii) the good order of Victorian society (iii) the physical and mental health of its citizens (iv) the good morals of its adults and children (v) the observance of the fundamental rights and freedom of all, including children and (vi) the good moral education of children whose parents have chosen a particular form of schooling.

The Role of the State in the Governance and Management of Religion and Religious Diversity for the Good Order and Welfare of Civil Society

Underlying this is the role of the State and its government in the governance and management of a multifaith civil society. Mechanisms for managing global, regional and local ethnic and religious diversity depend on broadening one's understanding about the functional equality of all persons and all faiths and building common foundational norms. Separation of religion and state does not imply a secularist or a majoritarian stance on the one hand, nor a theocratic approach on the other. The role and function of civil authorities is to adopt what Laycock (1990) has called 'a substantive neutrality'. Certainly it is a neutrality that is positive towards religion though this has to be further nuanced to accept that some religious traditions contain negatively destructive elements or practices or doctrines. The State in the continuing task of establishing a civil society must protect itself and its citizens against such things as religiously inspired terrorism, practices resulting in moral turpitude, financial corruption in religious bodies etc. in a civil society.

The required stance of the state might be better described as '**a positive facilitating, brokering and monitoring neutrality**' to create a culture of tolerance, acceptance and reconciliation through its legislative, judicial and policing agencies and to prevent the development of any damaging practice, policy or protocol. It must strive to treat all religions equally and fairly, but intervene where appropriate and only when necessary and in a prudent manner.

The responsibilities of the state in the governance of religious diversity are to keep an open religious market which research shows prevents the emergence and growth of ultra-fundamentalist religious movements (Introvigne 2004), and to **facilitate** religious practice in meeting the needs of many of its citizens. The second role is to encourage harmony and contact between the different faith communities in the creation of social cohesion – in this sense, it has to play more of a **brokering** role. Thirdly, it also has a **monitoring** role to detect at the earliest possible moment causes of difference and tensions between the religious groups, then to act purposefully in defusing such tensions and conflict from escalating into violence and to unmask the real motives behind conflicts or to take action against bad religious practice that threatens the state itself or its citizens or some of its citizens in the creation of a 'civic ethos' or 'a culture of reconciliation and co-operation' or 'a civil society'.

Another underlying critical element has been the intersection of religious law such as canon law or shari'a law with the laws and regulations of Federal and State legislatures. In the Australian context, it has been the practice and ought remain the practice that state law always takes precedence over religious law, and that religious law ought remain subservient to state law. Nor should Australia ever contemplate a parallel legal system.

The Importance of Religion and Its Contribution to the Social Wealth of the Nation

Despite the focus of this inquiry on the destructive aspects of religion in Victoria, nonetheless the conclusion remains that, on balance, religion in all its diversity has been and remains a constructive force in Australia. Religion makes a contribution that is core and continuing. As one major example, the Protestant ascendancy inculturated a Protestant ethic of thrift, hard work and individual discipline, encouraging its followers to accumulate wealth and invest capital, all of which can be compared to the social and economic performance of other longtime settler societies such as in Latin America. The best empirical source of this conclusion is the study sponsored by the immigration department, *Religion, Cultural Diversity and Safeguarding Australia* (Cahill, Bouma, Dellal & Leahy 2004) based on fourteen case studies of religious communities, consultation with religious leaders and a public electronic consultation. In many of these instances gathered systematically from across Australia, reference was made to trained religious personnel being involved in crisis and grief counselling, pre-marriage education and marriage counselling as well as general welfare such as answering knocks at the door by the destitute, the alcoholic and drug-dependent.

In the consultations with leaders and the electronic public consultation, it was found that religious leaders had some difficulty grappling with the notion of their faith's contribution to the nation's social capital. It was acknowledged that not all faith communities do all these things in equal measure, and that some are encapsulated within their community cocoon, even being opposed to the state, which is their right in terms of religious freedom.

Among the themes that emerged:

- Christian communities had built schools and other special educational institutions such as kindergartens, schools for the disabled and impaired and university colleges to educate millions of Australian students down the ages.
- Many hospitals, aged care facilities and welfare agencies, including the delivery of innovative programs, had been initiated by the major Christian denominations in all parts of Australia, and they were involved in the delivery of innovative programs as well as acting as lightning rods for emerging social problems because of their grassroots network.
- In the words of a Jewish leader, religion is the backbone and support of the value of altruism and of altruistic behaviour – as one submission put it, “throughout history, religion has been one of the most powerful sources of vision, values and social progress. The faith communities which collectively represent the majority of Australians share in common the eternal spiritual principles of love, justice and hope”.
- Religiosity has helped to develop moral character, including integrity, and provided an antidote to criminal, unethical and self-destructive behaviour.
- Faith communities, more than other institutions, emphasized the ethic of care within the philosophy of ‘good works’, and the erosion of religiosity would lead to a decline in the ethic of care and longterm commitment to the disadvantaged.
- Faith communities emphasized the dignity of the individual person, including the young and the aged, the useless and the disturbed, as well as highlighting family cohesion and a sense of justice.

- Volunteering, as ‘the sacrifice of self’ for the common good, was the basis of religious communities, and its example flowed right across society in the form of civic duty and national responsibility.
- Religious education encouraged the observance of the law and respect for the other, as well as social equity.
- Life’s *rites de passage*, basic to individual and family growth, were celebrated or mourned solemnly in religious rituals that link the past with the future, and, in the cases of dying, death and tragedy, religious ritual and faith allow victims or relatives to cope with the unpredictability of life and with psychological scars.
- Faith provides a purpose for living a committed life and gives reasons as to ‘why we are here’.
- The business notion of the triple bottom line with its emphasis on social justice and wealth distribution has been promoted with the help of religious groups
- Faith communities with their global networks can provide information to Australian leaders about other societies.
- The capacity to lobby and pressure the three levels of government on key national and local issues as well as global matters
- Faith communities have been very supportive, if not formative, of international aid agencies and the continuance of their work.

The Roman Catholic Church is the largest religious organization both in Victoria and in Australia with about one in four Australians affiliated to it, as measured in the 2011 census. Roman Catholicism, now representing about one-seventh of humanity, is a unique organization which has endured through the travails of history for just under 2,000 years led by the Bishop of Rome as Pope and his college of bishops who trace their succession back to the Apostles led by Peter. It is like no other comparable organization. Supporting the bishops have been its priestly ministers, both diocesan and religious, who have given their lives to the Catholic peoples and all peoples of the world – within their ranks, whilst there have been sinners there have been great and saintly people renowned down the centuries for their spirit of service, their spirit of faith and prayer and their gift of intellect. Names such as Paul of Tarsus, Augustine of Hippo, the Venerable Bede, Francis of Assisi, Thomas Aquinas, Joan of Arc, Teresa of Avila, Catherine of Siena, Mary MacKillop and Mother Teresa of Calcutta resonate down the ages. Much of Western culture has been incubated or inspired by the Catholic Church, its beliefs and its historic figures, not least in music and painting as our symphony concerts and major art galleries attest.

The Structure of the Submission

In making its recommendations to the Victorian Parliament, the committee is urged to take a human rights and transformative approach rather than “mea culpa” penitential statements and a partial inhouse restorative justice approach taken by the Catholic Church in its public statements and apologies and in its submissions to the various inquiries in Ireland, the U.K. and the U.S.A., and in the in-house process that was established in 1996 by the Melbourne Archdiocese.

This submission will focus on the Latin-rite of the Church for it is important to note that there is no known abuse case of any bishop or priest within Australia from the Eastern Catholic rites (e.g. Chaldean, Coptic, Maronite, Melkite, Russian, Syro-Malabar, Ukrainian etc.) – Catholics from these rites now represent about 7 – 9 per cent of the Australian Catholic population of 5.3 million, especially with the recent influx of Chaldean Catholics from Iraq and Syro-Malabar Catholics from Kerala in India. There is an important feature which differentiates these rites from the Latin rite inasmuch as celibacy is not a condition for priestly ordination (the Syro-Malabar rite is an exception). In other words, they have a married clergy though their bishops are celibate.

The church's complexity has been further amplified by the current construction of the Anglican ordinariate within the Latin rite which is currently allowing the switch of some Anglican clergy, both celibate and married, and their communities across to the Roman Catholic Church – as we shall see, this represents an opportunity in mapping the way forward. It is not unknown for the Church to reinstate married clergy into its ranks – the best recent example occurred in the former Republic of Czechoslovakia where during the Communist period married men were validly but illicitly ordained to ensure the continuance of the priesthood. When the Berlin Wall collapsed, in the early 1990s these married priests were validly incorporated into the Church through the Greek Catholic rite (one woman was ordained but her priesthood was not recognized).

An additional point is that, whilst child sexual abuse by women is comparatively rare, it is the understanding of this submission that there is no known case of child sexual abuse by Catholic female religious in Australia. In fact, it is Catholic women across the world who are in many cases doing the basic research and counselling and advocacy in pressuring church leadership to address the substantive issues.

In order to give some order to the very complex evidence, this submission will be structured around three basic themes:

- 1. Clerical sexual abuse of minors is an historical, worldwide and systemic issue within the Latin rite of Catholicism, which has shown scant regard for the child and teenage victims, and operated on poorly informed policy and practice regarding abusing priests and on unprofessional strategies for priests wrongly accused and/or charged**
- 2. The Catholic Church is incapable of and unable of itself with its episcopal leadership and its institutions to take the systemic steps to resolve the issues, handicapped by inappropriate theologies of priesthood and of sexuality and contained within an organizational pathology that for too long did not resort to criminal justice processes as legally and ethically required**
- 3. The State government of Victoria is required to intervene in the practices, policies and protocols of the Catholic Church and other religious bodies in accordance with the parameters of the ICCPR's Article 18 and to strictly monitor the implementation of the recommendations made by the Family and Community Development Committee and legislated by the Victorian Parliament in respect of all religious bodies**

1. Clerical Sexual Abuse as a Historical, Worldwide and Systemic Issue

Clerical sexual abuse within the Latin rite of the Catholic Church has a long historical lineage and is a systemic issue, manifesting itself in many countries. This thematic section will be structured around the following sub-themes:

- (a) Historical and Worldwide Prevalence of Clerical Sexual Abuse
- (b) The Mindset of Clerical Abusers
- (c) The Role of the Confessional
- (d) Catholic Priests and False Allegations

(a) Historical and Worldwide Prevalence of Clerical Sexual Abuse: To give some dimensions to the problem, we must first address the issue of the prevalence of clerical sexual abuse in historical terms. The tentative historical analysis suggests that the Church has always been acutely aware of pederasty after it railed against the pederasty of the Roman Empire. Early Church history shows that church authorities feared contact between men and boys – the earliest church council for which there are still records held at Elvira in 309 A.D. has 38 of its 81 canons dealing with sexual issues. Subsequently many monasteries took in abandoned children who were kept rigidly segregated from adults and this was regulated with strict rules. Thomas Doyle, an historian of canon law and canon lawyer, has suggested in his reading of the evidence that there were repeated attempts by church authorities to deal with clerical sexual abuse of minors. However, it is clear that the extent of clerical and monastic abuse in the different historical eras can never be known but it was always a festering issue.

In scoping the contemporary problem, we must address the issue of the prevalence of sexual abuse amongst the ordained clergy. Before doing that, it must be firstly acknowledged and stressed that the overwhelming majority of Catholic Latin-rite priests are not nor ever likely to be child sexual molesters. It is difficult to assess both the extent of the incidence of child sexual abuse by clergy and the actual number of offenders. Even less do we know the number of victims, including those who have suicided or suffered significant psychological consequences. No picture is complete, not least because of under-reporting. And many of the offenders are already deceased as are some suicide victims.

There are significant technical issues in quantifying the issue because of difficulties of constructing a data baseline. Many priests move in and out of dioceses for a variety of reasons, and there is some evidence that those who switch dioceses or transfer from other religious orders into the diocesan priesthood may have already been under a cloud for child sexual abuse and other sexual misconduct with adults.

The most authoritative source is the comprehensive study of the John Jay Center in New York which would on its empirical data give the figure that four per cent of priests have been found guilty and convicted of child sexual abuse as a percentage of the total number of priests in the USA. Other less authoritative studies put the figure in the range of 2 – 8 per cent.

Here in Victoria there are two sources of data that have been accessed and analysed by this researcher which provides a similar picture to the John Jay results. The main training centre for diocesan priests has been Corpus Christi College (CCC), now located in Carlton but previously in Werribee (now Werribee Park) and Glen Waverley (now the Victoria Police

Academy). It can rightly claim to be the most important seminary in recent decades as the three current archbishops of Brisbane, Melbourne and Sydney are its alumni as are all the current bishops in charge of the five Victorian and Tasmanian dioceses (with the exception of Ballarat where a new bishop (not a CCC graduate) has taken over from a CCC graduate).

Forty-five years ago in 1967, the Corpus Christi Priests' Association published a celebratory document which listed all the priests ordained between 1929 and 1966. This can provide a very useful analysis because those ordained in 1966 are now just over 70 and in the twilight of their priestly careers. The document listed 423 priests, of whom 378 were ordained for the five dioceses of Victoria and Tasmania (Ballarat, Hobart, Melbourne, Sandhurst and Sale) between 1940 and 1966 – the year 1940 is taken as the baseline as almost all the priests ordained prior to that are dead. Of these 378 Corpus Christi priests, 12 were to become bishops and four were deceased by 1966. About 25 had already resigned or were to subsequently resign.

Fourteen were charged with and convicted of child sexual abuse and, in four other cases where the offender is now deceased, church authorities admitted that abuse had taken place – this empirical conclusion is based on data drawn from my own knowledge and the useful listing provided by the Broken Rites advocacy organization. Thus, eighteen (4.76%) of the population of 378 ordained CCC priests are known child sex offenders. At least two of the eighteen were very serious serial offenders, abusing perhaps hundreds of children. An additional two were either convicted or the diocese accepted responsibility for offences committed against young adult women.

For the earlier period from 1929 (when the first Corpus Christi College priest was ordained) until 1939 for which data are much less reliable and there would probably have been considerable underreporting, 90 priests were ordained for the five dioceses of whom at least two priests (2.2%) were subsequently convicted.

Hence the 1940 – 66 CCC figure of 4.76 per cent squares more or less with the John Jay data. It also suggests that in purely statistical terms, the incidence of child sexual abuse is much higher than in the general population though it cannot be exactly quantified because of the difficulties of reaching an exact figure in the total male population where the abuse is mostly committed against nuclear or extended family members. However, in the recent 2011 census, there were in Australia 1,378,441 males aged over 65 representing 12.96 per cent of the total population. If we extrapolate from the data, if the general incidence of child sexual abuse of Corpus Christi College priests and of the general male population aged over 65 are compared, there would be 65,614 males presently living in Australia who would have been convicted of the crime of child sexual abuse (though allowance must be made for the cohort's mortality) – this is very far from being the case.

If this first analysis provides a look back, another 1964 document provides a look forward. The analysis is based on the list of 120 students who were studying at Corpus Christi College in 1964 and who would not begin to be ordained as priests until 1968. Of the 120 seminarians, 74 (61.66%) would be ordained in the period of 1968 – 1971 – of these, 7 are deceased, 20 (including this researcher) have resigned representing 26.95 per cent of the ordained cohort. Of the 74 baseline figure, four (or 5.41%) have been convicted of child sexual abuse.

If we bring together the two sets of data which follow more or less in chronological order with the youngest now aged at least 65, we arrive at a prevalence figure of 4.87 per cent as a minimum and subject to upward revision because of underreporting.

Priests from religious orders and religious brothers are also part of the scenario but obtaining the necessary baseline data would be difficult and expensive though the evidence does suggest that there have been particular problems within the Christian Brothers (mainly a teaching order) and the St. John of God Brothers (an order caring for intellectually disabled children). For religious brothers, it may be higher, especially among the Christian Brothers.

However, the incidence both Australia and overseas suggests that the incidence amongst religious order priests is probably lower than for diocesan priests. An analysis done by this author on the estimated 3880 priests, active and retired, who were attached to Australian dioceses and religious orders of priests as listed in the 1990-91 *Official Directory of the Catholic Church in Australia* suggests that an estimated 58.7 per cent of the priests belong to the dioceses whereas the rest belong to the religious orders and to the Eastern rites. The Broken Rites data suggests the offending rate of diocesan clergy working in the four Victorian dioceses as against religious order priests, convicted in Victorian courts or in out-of-court settlements was less than half for 41.3 per cent of the total religious order clergy. The lack of an adequate baseline requires us to make guesstimates but the offending rate for religious clergy is probably about 3 – 3.5 per cent with no allowance made for underreporting.

Hence, on the basis of the Victorian and USA data, the conclusion is that the prevalence of clerical sexual abuse is most probably in the 4 – 6 per cent range, which implies that about one in 20 ordained diocesan priests in Victoria and Tasmania became child sexual abusers. Because of the issue of underreporting, the range may be a little higher. There is no evidence that they abused children and teenagers before becoming priests though, as we shall see, some were probably abused as children, perhaps by religious but more likely by family members or friends.

This all represents a serious situation requiring probable intervention though 19 out of 20 diocesan priests did not sexually abuse minors. At the same time, it is not an occasion for “a moral panic” as described in the social science literature. It would be the counsel of this observer that parliamentary action, as recommended by the committee, should be measured and facilitative.

Compared to patterns of child abuse with other religious professionals and other professionals, Keenan concludes tentatively that “sexual abuse of minors is more often reported against Catholic clergy than against other caring frontline professionals or against leaders and ministers of other churches and religions” (Keenan 2012: 11).

It is also to be noted that, apart from the offending religious brothers, there are very few cases of sexual abuse of minors within the Catholic schooling system. In 2012, there are in Victoria 486 Catholic schools educating 194,219 primary, secondary and special students, representing 22.6 per cent of all Victorian school students. The 2010 figures show that these 486 schools were employing 22,216 (EFT 17,534.7) persons, both teaching staff (71.5%) and support staff (28.5%). The gender ratio is 5,585 male (25.24%) and 16,631 female (74.86%). If the

offending rate amongst the male Catholic school staff were the same as for the priests (4.87%), then over the past 20 – 30 years 269 male staff in Catholic schools would have been convicted of child sexual abuse – this is very far from being the case. Parents thus continue to send their children to Catholic schools, both Catholic parents (72.5% for all Australia according to the 2011 census) and other parents (27.5%), be they No Religion, Anglican, Orthodox or Buddhist.

The problem is clearly systemic and seemingly world-wide. In contemporary global terms, reports have emanated from the following 30 countries according to Marie Keenan: Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, China, Columbia, the Czech Republic, France, Germany, Hong Kong, Ireland, Italy, Jamaica, Malawi, Malta, Mexico, the Netherlands, New Zealand, Nigeria, the Philippines, Poland, South Africa, Spain, Switzerland, Tanzania, United Kingdom and United States of America. It had been thought that it was not a problem in the Asian churches, but in November 2011 it has come to the knowledge of this researcher (from a conversation in June 2012 with the University President) that a meeting of the sub-committee of the Asian Catholic Bishops' Conference was held at Assumption University (Suvanabhumi campus) in Bangkok in complete secrecy with no public outcome. Other recent reports given in the National Catholic Reporter (U.S.A.) suggest there are serious problems in the Polish church with the bishops responding inappropriately.

Because the issue is systemic, it is appearing right across the Catholic world.

- (b) The Mindset of Clerical Abusers:** Keenan (2012), Krachenfels (2011) and Vollman (2011) have directly surveyed and interviewed clerical abusers. Keenan's study is the more informative and thorough even though she interviewed only nine abusing priests but it was indepth interviewing based on her therapeutic relationship with the priests whilst Vollman's survey is hampered by low response rates.

The sexual abusing of minors is a manifestation of sexual deviance. Deviance, whilst appearing incomprehensible to outsiders, has its own internal logic together with individual self-justification or disavowal. The evidence is overwhelming that the abusing priests did not deliberately enter the priesthood to abuse children nor even to have access to children though Vollman suggests that some did enter the priesthood to deal with their strong sexual urges in a sacred environment. Nor did they use Catholicism "to do bad things". Keenan suggests that two of her nine entered the priesthood to escape their sexuality. Nor is there any evidence that bishops and religious superiors were condoning of the behaviour. A far better predictor is that some (but not all) abusing priests were themselves abused sexually as minors. As a result, they felt "impure" and, in some cases, had enjoyed the forbidden shame of sexual pleasure, called 'venereal pleasure' in the moral theological jargon of the church. At the same time many men who were abused as children do not become child sexual abusers.

The best evidence, according to Keenan (2012), also suggests that abuse is not related to sexual orientation even though in some senior church circles there is a strong belief that homosexuality is the cause of child abuse. In Keenan's study, six of the nine are homosexual, often having denied their gay status or refusing to face up to it prior to therapy. Almost all had had no prior sexual experience when they started abusing. All were found to be intelligent, products of a training system that lasts for at least eight years. They also were not suffering from any psychiatric condition, neither psychotic nor neurotic. They may have been

emotionally immature but they were neither psychotic nor abnormally neurotic in strict psychiatric terms.

Operating within an organizational climate of secrecy and denial, the abusing priests concealed their intense emotional and physical loneliness. They seemed to have associated little with their fellow priests, further increasing this celibate loneliness. And they were characterized by emotional vulnerability. All felt isolated in their sexual struggles and believed that no other man in the priesthood had similar struggles. All this was exacerbated by a culture of misguided obedience to the Church, and their greatest fear was dismissal from the clerical state. Their professional training and qualifications were of little use outside the priesthood, and they feared that, if dismissed, they would be cast onto the scrapheap of unemployment and penury in contrast to the relatively comfortable lifestyle of the priesthood. This implied that there was considerable scope for self-deception. The Krachenfels (2011) comparative study of both priest abusers and non-abusers, though hampered by its small sample, found that the clerical molesters had a lower sense of personal control, and were characterised by the capacity to externalize blame and responsibility. Hence, they did not see their actions as damaging or even traumatic for the victim.

In Eriksonian terms, their needs for intimacy had not been addressed appropriately and the usual intimacy crisis, usually solved by most people in their twenties through personal, sustained partnerships with a significant other whether male or female was never satisfactorily resolved. Much of this time may have been spent in an all-male institutional seminary environment which jeopardized or put at risk normal sexual development.

Their theology of clerical sexuality was built on purity, chastity, virginity, modesty and piety – they were being asked to lead a life that for them was too difficult to lead, especially when it is being lived unsupported by a close community. However, it is important to say that celibacy as such was not the direct cause of the abusing but it was so indirectly in the sense that celibacy was and remains the lynchpin of an organizational culture in which the systemic and worldwide pattern of clerical child sexual abuse is but one major symptom. They had become enculturated and trapped in a climate of a narrow, closed and ultimately destructive clericalism.

The other major symptom is the sexual misconduct of many clergy with adult women or with gay men, including the leading of a double life of which there have been two major cases in Victoria in recent decades as well as the well-publicized (though not in Australia) case of Fr. Marcial Maciel Degollado, founder of the apostolic community called the Legionnaires of Christ, and at one stage regarded as a living saint, who led a double life fathering children with two women and abusing some of the children (see the National Catholic Reporter investigation in Appendix Two for this ultra-extraordinary case which reached to the very highest levels of the Vatican). But the issue of clerical sexual misconduct with adults is well beyond the terms of reference of this inquiry but it is the other side of the coin and its response by the Church is one of organizational disavowal.

Was there any difference between Catholic abusing priests and at-large sex offenders? Whilst generally better educated and less likely to be suffering from a psychiatric condition, the abusing priests were no different in the way they dealt with their criminal actions. According to Vollman's study, they used similar stigma management techniques. Some denied the

allegations outright or, when they admitted them, engaged in a process of deviance disavowal from “the sick self”, often after they had received treatment. The admitters also used typical techniques of neutralization, seeing the self as fallible and forgivable.

All this evidence concerning the mindset of the abusing priest, combined with the historic and worldwide presence of the phenomenon, leads to the empirically-based conclusion that it is a systemic issue. Unfortunately, as we shall see, this is not accepted by church leadership in their misguided responses even though, in the context of their demands on the Victorian state for religious freedom, the patterns of child sexual abuse contravenes (i) the public safety of its citizens (ii) the good order of Victorian society (iii) the physical and mental health of its citizens (iv) the good morals of its adults and children (v) the fundamental rights and freedoms of others and (vi) the good moral education of children whose parents have chosen a particular form of schooling, especially those children who were taken out of the classroom by priest offenders.

- (c) **The Role of the Confessional:** The role that the sacrament of penance and the confessional plays in Catholic sacramentality and ritual is difficult for the outsider to understand, and whilst it is the butt of jokes, it has a positive part to play in Catholic spirituality and confronting one’s sinful mistakes. Some commentators have called for confessional secrecy to be abrogated by the state under the mandatory reporting guidelines. The abusing priests used the sinful lapse – confession - contrition – redemption process to excuse and not face up to their behaviour and its criminal nature.

Underpinning this was an understanding of moral theology dominated by a purity ethic and a focus on the very act of sexual violence rather than a relational sexual ethic. This had the effect of neglecting any consideration of the impact on the child or teenage victim. This was exacerbated by another feature of the confessional process – all priests in their hearing of confessed sins are trained to forget sin as the information properly belongs, not to the confessor priest, but to God. Another underpinning here was the failure of both the abusing priests and their bishops and religious superiors to distinguish between criminal law and canon law to recognize that sexual behaviour with a child was criminal and sinful whereas sexual behaviour with an adult may be of a sinful nature unless it is rape or sexual assault when it becomes criminal, or it steps outside the boundaries of professional conduct.

We shall return to this issue in our recommendations but this submission does not support lifting the privileging of confessional material even in cases of child sexual molestation. Any such law would not be obeyed, and priests worldwide would be prepared to go to prison to protect the confessional seal. There are other ways of dealing with the substantive issues. However, all priests in all extra-confessional fora should be subject to mandatory reporting requirements.

(d) Catholic Priests and False Allegations

Part of the very complex scenario being addressed by this parliamentary inquiry concerns false allegations against priests of sexual molestation of minors even though it is to be strongly stressed that most allegations are not false. There are no formal studies of this phenomenon though Marie Keenan, basing her remarks on her clinical experience with falsely accused priests, has raised this issue in a recent speech in October 2011 at the AGM of the

Association of Catholic Priests in Ireland. In her view they are “the forgotten ones” because “there is not much public appetite for hearing the plight of clerics who are falsely accused especially in the face of such wrongdoing by so many of their clerical colleagues”. Her observations are that their hurt and anger is rarely directed to the accuser but rather in the way their case was handled by church authorities. They would prefer the matter be investigated, not by the Church, but by police or health authorities who in their view handle such matters with greater professionalism and care. The accuser needs to be questioned by a competent investigator to ensure the priest is not publicly suspended on a mere allegation by a psychologically unwell person or by a person operating a con or a fraud to obtain financial damages. At present there is no provision for restorative justice for the falsely accused priest.

In Australia, there are at least two cases of false allegations, the first case being against a very senior church figure who was exonerated in a case where there may have been a case of mistaken identity by the 11-year-old boy since there was a now known sexual offender at the same camp and whose physique was not dissimilar to that of the church leader. The second case is of a well-known priest in a northern state where the accuser is a victim of a serious mental illness. We shall return to the issue of false allegations in our list of recommendations.

Connected to this issue are the allegations, sometimes false, sometimes magnified, sometimes vexatious, made by adult women against priests, but this issue is outside the terms of reference of this inquiry.

2. Incapacity of Church Leadership to Address the Systemic Issues

The evidence is overwhelming that the pattern of response of episcopal leadership, at a local, national and global level in response to the systemic pattern of child sexual abuse within the Latin rite of the Catholic Church, was not only inadequate in most individual cases but was systemically inadequate.

This third theme will be built around the following sub-themes:

- (a) The Episcopal Mindset and the Response Failures in a Climate of Submissive Obedience
- (b) The Failed Leadership of the Vatican in Addressing Systemic Issues
- (c) The Lack of Participatory Consultation with Catholic Lay People
- (d) A Flawed and Inadequate Theology of Sexuality, including Priesthood Sexuality
- (e) Financial Settlements and the Church’s Financial Position
- (f) The Melbourne and Sydney Archdiocesan Statements in Late August 2012

(a)The Episcopal Mindset: The evidence from formal authorities, usually government inquiries or grand jury reports in Ireland, the U.K. and the U.S.A., is unanimous and overwhelming in concluding that diocesan bishops and their administrators such as vicar-generals did not respond appropriately when they became aware of criminal behaviour; they endangered the welfare of children and adolescents, ignoring credible complaints and often shifting clergy to new parishes or in some cases shifting them to other dioceses, even outside the original country. These reports in chronological order are:

2002 Suffolk Report (Special Grand Jury, Supreme Court, Suffolk (USA))

2002 Westchester Report (Grand Jury, County of Westchester)

2003 Boston or Massachusetts Report (Office of the Attorney General, Massachusetts)

2003 Manchester Report (Office of the Attorney General, New Hampshire)
2004 John Jay Centre of Criminal Justice Report No. 1
2004 Maine Report (Office of the Attorney, State of Maine)
2005 Ferns Diocese Irish Report
2005 Philadelphia Report (Office of the Grand Jury, Philadelphia)
2006 John Jay Centre of Criminal Justice Report No. 2
2009 Ryan Report (Commission of Inquiry, Republic of Ireland)
2009 Murphy (Irish State report on the Dublin archdiocese) Report
2011 John Jay Report of Criminal Justice No. 3
2011 Philadelphia Grand Jury Report
2011 Cloyne Report (Commission of Inquiry in to Cloyne diocese, Republic of Ireland)

The early Boston Report which led to the resignation of the Cardinal Archbishop and to a sinecure position in Rome stated that there had been an institutional acceptance of abuse and a massive and pervasive failure of leadership during six decades of misguided priorities to protect the image and reputation of the Church rather than the safety and well-being of the under-age victims. The corollary aim was to manage the welfare of the offending priest. These successive reports have led, in Keenan's view, to bad management of the cases, poor record-keeping, poor complaints procedures, poor communication between diocesan personnel, poor demarcation of the lines of responsibility, poor education of the clergy on the issues involved and the lack of empathic listening by church leaders to allegations. So far only one recent case (in Philadelphia) has led to the conviction and jailing of a senior priest as a consequence of his not referring cases to the policing and criminal justice authorities. The reports in some cases found that the material did not warrant prosecution of the episcopal authorities or there was insufficient evidence or there was no criminal liability involved or a diocese was immune from prosecution, often due to the expiry of the statute of limitations (which, of course, does not exist in Victoria in respect of sexual assault).

The focus, however, must not be just on the individual decision-makers but on the organizational culture which can only be described as verging on the pathological even though the bishops are good and well-intentioned men, dealing with difficult issues. Firstly, the bishops were motivated by the aspiration to prevent scandal, which would undermine the 'faith of the people' and damage the societal credibility of the Church. Scandal is a highly important concept in institutional Catholicism. In other words, for the bishops their primary obligation was to the institutional church combined with a refusal to expose publicly any weakness which recourse to the criminal law would have inevitably resulted in. Initially the abuse was seen as an individual failing which could be remedied by spiritual solutions such as prayer, meditation and spiritual retreats and perhaps professional counselling. The situation was exacerbated by the climate of confidentiality and secrecy imposed by the dictates of canon law. And this desire to protect the reputation of the church explains the requirement of confidentiality imposed in in-house financial settlement cases with victims.

In many cases, the bishops were not helped by the professional confusion in the advice they were receiving about recidivism. Another problem which has not received the amount of attention that it deserves is the advice that the bishops would have received from their lawyers and the pressure from their insurance companies. In some cases they shopped around for the advice that suited them best, the best for the priest perpetrator. In fact, the correspondence between dioceses and their insurance companies over the past two decades would make for

interesting reading. But that veil has not been lifted though it is noteworthy that despite protestations how little they knew or how poorly they understood the problem, in 1987 the officials of the Archdiocese of Dublin took out insurance against sexual abuse by its clergy.

The defence by the bishops of “the learning curve” hypothesis has some truth in it as Elizabeth Delaney has documented for the Australian context, but it has not led to systemic change to address the underlying causes that have to do with an irrelevant theology of the priesthood built on an out-of-date “village pastor” or “paese pastore” model and a misguided theology of sexuality as we shall see.

Another element of this organizational pathology was that the bishops, as fellow priests, and because they were usually desperate to have sufficient priests to serve in parishes, did all in their power to salvage the priesthood of an abusing priest. An excellent illustration is given by Keenan, quoting an Irish bishop who said, “It is very difficult for someone who is a celibate himself not to be influenced by that (salvaging the priesthood) when dealing with priests. Your whole identity is tied up with your ministry; your ministry is your life. One of the reasons for that is celibacy. I believed at the time that if we took away his ministry we would take away his life. I didn’t want to do that”. Keenan goes on, commenting, “The suggestion is that no bishop wanted to take away the “erring” priest’s life. I believe this partly explains why so many bishops found it difficult to remove the offending cleric from ministry even when clear complaints were made against him, and why the bishops moved the offending cleric around to give him every chance to redeem and reform himself. In taking this action, some Church leaders took a restorative rather than a punitive approach to the offender. They were willing to trust the word of the perpetrator, who had not disclosed the extent of his offending and who had promised not to re-offend. In doing so, the bishops did not take account of the harm that was being done to children.” (Keenan 2012: 205).

(b)Failed Vatican Leadership: For the outsider, it is not easy to appreciate the organizational culture within the upper echelons of the Catholic Church which is characterised by loyalty and obedience to the Pope who, within the Latin rite, holds supreme, full, immediate and universal power with no recourse or appeal to an external authority. After the “opening of the windows” during the Second Vatican Council when there was genuine debate, the past forty years has seen a centripetal impetus within the Church rather than a centrifugal mechanism as desired in the documents of the Second Vatican Council. The regular Synods of the Bishops, introduced as an innovation, have been as stage-managed as the congresses of the Chinese Communist Party.

The more serious failure has been to see the issue not as systemic nor as driven by a constellation of factors beyond the terms of reference of this inquiry. The “rotten apples” theory is preferable because it requires no serious institutional change. Pope Benedict XVI, who has a much better record on combating clerical sexual than his predecessor, Pope John Paul II, who simply did not believe much of the evidence, especially in regard to the Degollado case (see Appendix One), sees the problem as caused by sickness, sin and evil brought about as part of the *mysterium iniquitatis*, the mystery of evil. Appalled by its incidence, Pope Benedict sees it as part of modern relativism which sees nothing as intrinsically wrong. He has stated that we must love the sinner as much as the sinned against. His response has been for the Church to respond better to complaints and ensure that it does not happen again. Whilst he has removed bishops from their office for raising doctrinal issues

such as ordination of woman (e.g. Bishop William Morris, Toowoomba), he has never removed any bishop for failing to deal appropriately with clerical sex abuse cases though some have resigned of their own accord. As well, an oath of silence was placed on the bishops.

In 2010, Monsignor Charles Scicluna, a Maltese cleric appointed by the Vatican to handle the issue said that about 3000 cases had been handled by the Vatican's Congregation for the Doctrine of the Faith which in 2003 under Cardinal Ratzinger took control of the issue within the Vatican. However, the Vatican does not have a proper database because the national episcopal conferences do not have proper databases.

Another factor was also at play. Whilst Canon 1395 condemns clerical sex with a minor, the Congregation for the Clergy was pressuring the bishops to ensure that due process was followed for the priest according to the canonical requirements. The victim was left aside. Nor was there any advice to take the matter to the civil authorities though this has now changed.

Part of the mentality is seeing the Church as a *societas perfecta* in organizational terms with pyramidal lines of authority though this is partially balanced by the notion of *Ecclesia semper reformanda*. And central to this is a distorted notion of obedience which, in Roman circles, is exacerbated by ecclesiastical careerism in climbing the clerical ladder to higher things.

Here in Australia Bishop Geoffrey Robinson had become disturbed by the silence of Rome in the late 1990s and the failure of the bishops to challenge the Pope and the Vatican officials. In Robinson's view, it is "a combination of loyalty, love and fear". Keenan comments, "it may well be that when a bishop seriously begins to question Catholic moral teaching and the operations of power within the Catholic Church, he ultimately ends up questioning his own role in an organization that gives absolute power to one man, a power that eventually silences him from using his better judgement and speaking what he believes to be true. How individual and systemic responsibility and accountability are played out in these scenarios is of course at the heart of the current issue" (Keenan 2012: 222).

(c) The Lack of Participatory Lay Consultation: The top-down model of authority within the Catholic Church has led to a situation where the ordinary members of the Church have no channel for expressing their concern. As the Murphy Report on the Dublin archdiocesan affirmed, the laity were "bystanders". They have deep misgivings about the whole phenomenon, and yet they have been given no real channel to interrogate their episcopal leaders or for them to be responsive to their questions and to those of the victims and their families.

And yet there is such a mechanism existing in church processes, namely the diocesan synod, which is well recognized in church canon law. And was recognized in the documents of the Second Vatican Council in the 1965 Decree on the Bishops' Pastoral Office in the Church, *Christus Dominus*, which in par. 36 stated, "This sacred Ecumenical Synod earnestly desires that the venerable instrument of synods and councils flourish with new vigor. Thus, faith will be spread and discipline preserved more fittingly and effectively in the various churches as the circumstances require".

Yet in the four Victorian dioceses, a synod has never been held in living memory. Yet such synods are needed to address two very fundamental issues (i) a theology of the priesthood for the 21st century and (ii) a theology of human sexuality for the 21st century.

(d)A Flawed Theology of Sexuality: The Catholic Church has a theology of sexuality grounded in the centrality of the procreating couple that has not successfully incorporated contemporary psychological insights nor the advances in the health and reproductive sciences except for its emphasis on the natural reproductive cycle. Moreover, it is not embedded in a contemporary and realistic anthropology of sexuality which often is spiritualized into an ineffable theology of the body. The effects of this lacuna have spread right throughout the organization. It reached its nadir with the publication in July 1968 of the papal encyclical of Pope Paul VI, *Humanae Vitae*, which condemned as equally evil both abortion and artificial contraception.

It is important for the committee to understand the issues involved here because it relates to the organizational culture. Paul VI rejected the findings of the majority commission that he had appointed to advise on the contraceptive issue. He accepted, heavily pressurised by a group of conservative cardinals led by Cardinal Ottaviani, that accepting the majority findings would abrogate church tradition. Masturbation, whether individual or mutual in the case of a married couple or otherwise, is gravely sinful as are artificial methods of contraception, such acts being “intrinsically evil acts” and that sexual intercourse must always remain open to the transmission and possibility of life without any artificial barrier, even in cases of violent rape where the trauma can trigger spontaneous release of the ovum.

The church is not opposed to responsible parenthood, but it allows only the natural element of time to be used in avoiding fertilization through the timing of the female menstrual cycle. There have been three fundamental flaws in the argument which still continues to be pursued by the Vatican or “the magisterium”, to use the ecclesiological jargon.

The first is the issue of the natural law. The ruling that all acts of intercourse must remain open to the transmission of life and not be interfered with by pills, condoms, etc., based on the moral philosophy of natural law theory which is interpreted to say that artificial contraception is against nature and the natural bodily processes of the female, pre-menopausal woman. However, as the great Catholic theologian, Karl Rahner, was to subsequently remark, the issue is not whether a particular act is for or against nature but to what extent are we allowed to manipulate nature in the achievement of the good of responsible parenthood.

In the second and related flaw, the argument that all acts of sexual intercourse must always remain open to the transmission of life, logically implies that the post-menopausal woman could not have any act of sexual communion with her male partner – this, of course, has never been the position of the Church but it illustrates the impasse and the dead-end that Catholic moral theology currently finds itself in. Of course, there is much to be said for natural means of contraception, but it essentially is a health and reproductive decision. Moreover, what is missing is a theology of relational sexuality.

Lastly, the *Humanae Vitae* ruling has never been, in ecclesiological terms, “received” or accepted by the Church and, in particular, its female members during their reproductive

years. The incidence of artificial contraceptive use by Catholic and non-Catholic women, certainly in developed countries where statistics are most reliable, are more or less the same. Furthermore, there is another indication of the failure to “receive”. In the immediate years after the 1968 encyclical, eleven episcopal conferences, including the Australian, affirmed in statements to their peoples that they had the right to exercise their consciences in coming to a decision on how they pursued the goal of responsible parenthood in their marital lives.

Clerical celibacy has been embedded in this flawed approach to sexuality and sexual expression so that, in a theology of sacrifice, every sexual thought, word, desire and act outside of marriage is deemed as sinful. It must be acknowledged that many priests are able to live out their lives in personal fulfilment for the great benefit of others without genital engagement with another. But as Keenan reflects on her interaction with the abusing priests, “insufficient attention has been paid to generations of clergy who have attempted and in many cases failed to live according to such moral (celibate) norms. In effect, attempts to control sexual desire and sexual activity have led to sex-obsessed lives of terror in which the body is disavowed, sexual desire is a problem to be overcome and the moral superiority of vowed virginity is presumed” (Keenan 2012: 234). In other words, the abusing priests were being asked, as the condition of a priesthood committed to because of love of God and desire for human service often in the most extreme of circumstances, to lead impossible lives, exacerbated in many but not all cases by childhood sexual scripts as a result of their own childhood abuse. In other words, the policy and practice of clerical celibacy and the associated protocols indirectly led in their cases through the culture of clericalism to deviant behaviour which has harmed the good order of civil society.

(e)Financial Settlements and the Church’s Financial Position: One of the drivers of the inhouse approach to the clerical sexual abuse issue was to contain the financial settlements with victims within manageable proportions and within the financial means of the Church. A recent *The Economist* Report (18th August, 2012) has analysed the very complex financial situation of the U.S.A. Catholic Church and concluded that they are in “an unholy mess” with a complete lack of openness, financial mismanagement, questionable business practices and a lack of financial coordination, whilst acknowledging the excellent schools, universities, hospitals and hospices it administers. In the U.S.A., an average of about \$1M has been paid to individual victims for a total of US\$3.3 billion with much more likely to be paid out as the statute of limitations on the sexual abuse crimes have been extended. It would seem that funds in “ungainly financial contortions” have had to be diverted from donations given for other worthy causes and that priests’ retirement funds may have been raided to cope with the liquidity crisis. Eight dioceses have had to declare bankruptcy. Archbishops and bishops are not business or financial experts even though they rely on such experts.

The situation in Australia is probably little different as there is a complete lack of transparency and accountability in relation to diocesan finances of which even senior parish priests are unaware. It would seem that where religious organizations are receiving public funds there should be complete openness, transparency and accountability with published public statements and budgets.

(f)Melbourne and Sydney Archdiocesan Statements in Late August 2012: Just as this submission was being finalized, two church statements were released: (1) an undated statement, **Sexual Abuse: the Response of the Archdiocese of Sydney** and (2) **A Pastoral**

Letter (21st August, 2012) signed by the four Victorian bishops and countersigned by the heads of Catholic Religious Australia, Sister Annette Cunliffe, and of Catholic Religious Victoria, Sister Helen Toohey.

Both documents, designed to shore up the faith of the Catholic faithful for the harrowing months ahead, are impressive “mea culpa” statements with the use of words and phrases such as “continuing shame”, “renewing this apology”, “remorse”, “Church processes failed the children in our care” etc with the Victorian pastoral letter stating that “The Church respects the Parliamentary process and will cooperate fully with the Inquiry” though this remains to be seen. Both mention the two in-house (though the Sydney statement denies its process is in-house) protocols. Almost all church statements and documents are replete with Biblical quotations, excerpts from papal and magisterium documents and with Vatican II citations but these are completely missing from these two documents except for the Sydney statement quoting the contritional speech by Pope Benedict during World Youth Day. The Sydney statement is the much longer and weightier document, outlining, among other things, changes in the Vatican response and framed around four principles.

However, there are significant problems in both statements. Firstly, the problem of clerical sexual abuse of minors is not properly named. **It is a male, not a female, issue**, perhaps both statements illustrating the anti-woman bias which so many accuse the Church of. Secondly, there are significant and dangerous sleights-of-hand in targeting the issue. The Victorian statement astonishingly never uses the word, “priest”, because its not incorrect focus is upon the “children and their families”. The Sydney statement clearly is upfront that “priests” are the problem but it dilutes the issue by adding “priests and church workers” as though there is a serious child sexual abuse amongst non-clerical male and female church workers. Thirdly, and perhaps most importantly, at no stage do the two statements give any indication as to what are **the causal factors** – there are statements, especially in the Melbourne statement, that this is a general social problem (which it is), implicitly shifting the focus away from the systemic issues within Church practices, policies and protocols.

3. Government Intervention: Conclusions and Recommendations

What is the way forward? It is the argument of this submission that the State has the authority to intervene, but always in a careful and prudent way, because the public order of Victorian society has been put at risk as has the mental and physical health of its citizens, especially its child citizens and the infringing of their rights. This has been because:

- **Hundreds of young children and adolescents have been seriously damaged in terms of psychological and human maturity well-being by the criminal actions of Catholic priests, damaging public order, the safety of its child citizens and their rights and freedoms**
- **As part of a failed systemic culture of clericalism and a commitment to a life that for them was impossible to lead, combined with pre-conditioning factors, Catholic priests to an incidence far in excess of any other group in society have committed criminal acts against these children and adolescents**

- **The parents of these children were grossly betrayed by the Church and its offending priests due to their mistaken belief in the goodwill of the Church and its religious personnel even though most such personnel have lived lives without sexual blame**
- **The Church through its leadership authorities reacted most inappropriately to cases as they became known to them, seeking to protect the reputation of the Church and the welfare of the priest perpetrator without caring appropriately for the victims and recourse to criminal justice authorities, all based on a culture of narrow, closed clericalism**
- **Because of all this, a very considerable and undocumented financial burden has been placed on Federal and State funds, especially its criminal justice, police and health institutions**

Despite these negative conclusions, the Australian Catholic Church remains a force for good, contributing to the nation's social capital through its advocacy of fundamental values of love, care, social justice and reconciliation and its educational, health and welfare institutions spread in every corner of the nation. But, and it is a huge but, there is a negative side which needs to be addressed. And, as we have stressed, the Church of itself cannot solve its own problems except with "mea culpa" statements and inhouse solutions.

However, in the midst of this religious mess, it needs to be stressed that, if our figures are relatively correct, 19 out of 20 diocesan priests did not become child sexual abusers.

The Victorian government is empowered to act within the parameters of the right to freedom of religion and belief as understood within the Australian and Victorian constitutions and within the parameters of Article 18, par. 1- 4 of the International Covenant of Civil and Political Rights of which Australia is a signatory to implement particular strategies and series of measures and recommendations. It is also important that religious bodies, in particular the Catholic Church, implement as a matter of urgency confidence building measures and actions of civic goodwill.

This submission would envisage, together with the Minister for Community Services, four implementing and monitoring agencies as public administration instruments for implementing any integrated strategy, namely

1. **The Victorian Minister for Community Services** who will have responsibility for the overall strategy, including legislative and regulatory changes together with coordination and consultation with her Federal and State/Territory ministerial counterparts
2. **The Family and Community Development Committee** of the Parliament of Victoria, as a joint bipartisan parliamentary committee, which will be the central body in the implementation and monitoring roles and reporting directly to Parliament on an annual basis for the next five years.

3. The **Office of the Child Safety Commissioner** who provides advice to both the Minister for Community Services and the Minister for Children on issues impacting on the lives of children, in particular vulnerable children. According to its website, “it is achieved through listening to children, advocating on their behalf, being impartial, leading on child-safe practices, acting with integrity, and being held accountable”. It is suggested that its charter and powers be extended for the purpose of the implementation of this strategy
4. An **Eminent Catholics Task Force** to be appointed by the Victorian Government for a period of five years on the recommendations of the Family and Community Development Committee to work with the leadership of the Victorian and Australian Catholic Church in implementing the strategy and in both monitoring and reporting to the relevant Ministers and to the Victorian Parliament on the implementation of the Strategy. Suggested members of such a taskforce are given in Appendix Four.

The recommendations of this submission are:

- (a) That the Family and Community Development Committee request the Victoria Police investigate cases where senior leaders in any religious group did not report to the policing authorities serious cases of child sexual abuse by religious personnel over whom they had administrative control and, where substantive evidence exists, the cases be referred to the Victorian Office of Public Prosecution
- (b) That the Family and Community Development Committee request the Victoria Police to investigate further allegations of child sexual assault and even more serious crimes in relation to clerical child sexual abuse
- (c) That the Victorian Parliament immediately abrogate the exemption of marital status under the Victorian Equal Opportunity Act given to religious bodies and that marital status not be a bar to admission to any religious leadership rank
- (d) That the Family and Community Development Committee in association with the Victorian Equal Opportunity Commission conduct an investigation in abrogating the other exemptions under the Equal Opportunity Act in accordance with Article 18 of the Universal Declaration of Rights and Article 18 of the International Covenant of Civil and Political Rights
- (e) That the Victorian Minister for Community Affairs liaise with her federal and state/territory counterparts to adopt uniform legislative changes across Australia and to champion same or similar strategies as recommended
- (f) That the Victorian Minister for Community Affairs liaise with the international and/or national representatives of major religious bodies to advise them of the Victorian strategies to counter systemic sexual abuse of children in accordance with the Australian and Victorian constitutions and with the relevant international human rights conventions
- (g) That the Family and Community Development Committee report annually to the Parliament of Victoria on (i) the implementation of the strategies to counter systemic

sexual and other abuse of minors by religious personnel (ii) the degree of cooperation and the series of initiatives introduced by religious organizations and (iii) recommendations of a legislative or regulatory or administrative nature to be introduced

- (h) That the Family and Community Development Committee in its report to the Parliament of Victoria acknowledge the major contributions religious groups make to Victoria, stating their admiration and support to all non-offending religious personal, also acknowledging the reality of false accusations
- (i) That the Family and Community Development Committee oversee the implementation of a strategy by religious organizations to care for in a professional manner those religious personnel falsely accused of sexual misconduct (see Appendix Four for the outlines of a suggested strategy)
- (j) That the Office of the Child Safety Commissioner conduct an audit of training programs preparing religious personnel with a view to assessing their addressing of child sexual abuse and associated abuse and violence issues and of the Office itself delivering suitable educational and appropriately assessed modules addressing these issues
- (k) That all religious agencies and their umbrella bodies who are in receipt of government funds for whatever reasons be required to make public on an annual basis their financial statements, arrangements and budgets
- (l) In respect of the four Catholic dioceses in Victoria which jointly have the highest child sexual abuse incidence of all religious bodies and professional personnel, the Family and Community Development Committee working with the Eminent Catholics Task Force and in association with the Office of the Child Safety Commissioner work with Latin-rite Catholic Church authorities to implement the following measures:
 - (1) That the 1996 internal mechanism established within the Catholic Archdiocese of Melbourne be dissolved and be replaced by a process under the direction of the Office of the Child Safety Commissioner
 - (2) As a confidence-building gesture inactive married priestly ministers be immediately re-instated into active service with biritual faculties, using the mechanism of the Personal Ordinariate of Our Lady of the Southern Cross under the provisions of *Anglicorum Coetibus* and based on the Czechoslovak precedent
 - (3) That a strategic plan be developed to incorporate newly trained married men into the priestly ministry in the State of Victoria using the mechanism of the Personal Ordinariate of Our Lady of the Southern Cross under the papal provisions of *Anglicorum Coetibus*
 - (4) That, as a confidence-building gesture, the third rite of penance of the Sacrament of Penance become the norm for a ten-year trail period instead of the first rite requiring private confession

- (5) That the Victorian Minister of Community Services consult and confer with the Apostolic Nuncio, the Australian Catholic Bishops Conference and the Conference of Religious Australia, advising them about the measures being taken and their implementation
- (6) That the four dioceses and all religious orders submit detailed plans on the assessment process of the psychological suitability of priesthood candidates, both celibate and married.
- (7) That a diocesan synod be held in all four Victorian dioceses by July 30th, 2014, in association with the Eminent Catholics' Task Force, with the agenda to include (a) the theology of priestly ministry in the Victorian dioceses, including practice, policy and protocols and (b) a theology of Christian theology grounded on an empirically grounded anthropology

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APPENDIX ONE

**LIST of RECENTLY PUBLISHED
THESES**

LIST of RELEVANT RECENTLY PUBLISHED THESES

- Asika, Raphael Iwuchukwu (2010) *A program for enhancing awareness among seminarians in Nigeria about the implications of sexual abuse of children and young people*, doctoral thesis, Catholic University of America, USA – please note this thesis examined Nigerian seminarians preparing to go as priests to the U.S.A.
- Dolcich-Ashley, Anselma (2011) *Precepts, rights and ecclesial governance: a moral-theological analysis of the Catholic sexual abuse crisis in the US*, doctoral thesis, University of Notre Dame, USA
- Gariepy, Gilbert (2008) *A critical evaluation of the requirement of celibacy for diocesan priests of the Latin rite of the Roman Catholic Church*, doctoral thesis, University of Manitoba, Canada
- Krachenfels, John (2011) *Attribution style of Roman Catholic clergy of sexual offences against minors*, doctoral thesis, Adelphi University, USA
- Medlin, Joseph (2008) *The crisis communication techniques employed by the dioceses of Los Angeles and Orange countries during the child abuse scandals*, doctoral thesis, California State University, USA
- Vollman, Brenda (2011) *Identity and behavior: Exploring an understanding of “being” and “doing” priesthood for Catholic priests accused of the sexual abuse of minors*, doctoral thesis, City University of New York, USA

APPENDIX TWO

The Degollado Case

Article from the National Catholic Reporter, 2010

In his time, the late Fr. Marcial Maciel Degollado was the greatest fundraiser of the modern Roman Catholic church. He was also a magnetic figure in recruiting young men to religious life in an era when vocations were plummeting. Behind that exalted façade, however, Maciel was a notorious pedophile, and a man who fathered several children by different women. His life was arguably the darkest chapter in the clergy abuse crisis that continues to plague the church.

The saga of the disgraced founder of the Legion of Christ, a secretive, cult-like religious order now under Vatican investigation, opens into a deeper story of how one man's lies and betrayal dazzled key figures in the Roman curia and how Maciel's money and success helped him find protection and influence. For years, the heads of Vatican congregations and the pope himself ignored persistent warnings that something was rotten in the community where Legionaries called their leader *Nuestro Padre*, "Our Father," and considered him a living saint.

The charismatic Mexican, who founded the Legion of Christ in 1941, sent streams of money to Roman curia officials with a calculated end, according to many sources interviewed by *NCR*: Maciel was buying support for his group and defense for himself, should his astounding secret life become known.

This much is well established from previous reporting: Maciel was a morphine addict who sexually abused at least 20 Legion seminarians from the 1940s to the '60s. Bishop John McGann of Rockville Centre, N.Y., sent a letter by a former Legion priest with detailed allegations to the Vatican in 1976, 1978 and 1989 through official channels. Nothing happened. Maciel began fathering children in the early 1980s -- three of them by two Mexican women, with reports of a third family with three children in Switzerland, according to *El Mundo* in Madrid, Spain. Concealing his web of relations, Maciel raised a fortune from wealthy backers, and ingratiated himself with church officials in Rome.

"What I can say about Fr. Maciel is that he was a consummate con artist," Fr. Stephen Fichter, a sociologist and former Legion official, told *NCR*. "He would use any means to achieve his end, even if that meant lying to the pope, or any of the cardinals in Rome."

When Maciel died on Jan. 30, 2008, the Legion leadership announced that the 87-year-old founder had gone to heaven. While God alone knows Maciel's fate, the Legion's statement stands in hindsight as one final act of deception by a figure whose legacy is still wreaking havoc from the grave. In February 2009, the Legionaries revealed that Maciel had a daughter. Late last month, the Legionaries issued a vaguely worded statement of regret to unnamed victims of Maciel -- four years after Pope Benedict XVI banished him from active ministry to "a life of prayer and repentance" for abusing seminarians.

Maciel left a trail of wreckage among his followers. Moreover, in a gilded irony for Benedict -- who prosecuted him despite pressure from Maciel's chief supporter, Cardinal Angelo Sodano, Vatican secretary of state from 1990 to 2006 -- Maciel left an ecclesiastical empire with which the church must now contend. The Italian newsweekly *L'espresso* estimates the Legion's assets at 25 billion

euros, with a \$650 million annual budget, according to *The Wall Street Journal*. The order numbered 700 priests and 1,300 seminarians in 2008. On March 15 of this year, five bishops, called visitators, from as many countries, delivered their reports to the pope after a seven-month investigation. A final report is expected by the end of April.

Not in centuries has a scandal in the church had such complexity as this one. A huge financial operation is in the hands of a religious order many critics have likened to a cult, a group whose leadership is suspected of hiding its superior's corrupt life. As the Vatican grapples with the Legion -- and thorny legal questions as to whether the Holy See can intervene in the Legion's far-flung financial operations -- three of Maciel's sons and their mother in Mexico demand compensation, claiming they were cut off by the Legion when Maciel died.

Besides the complex questions of whether to dismantle or "reform" the Legion, Benedict is under pressure from a resurgent sex abuse scandal in Ireland, and cases from years back in Germany, Wisconsin and Arizona, in which he reportedly failed to discipline abusive priests.

The Legion scandal stands out for another reason: The Maciel case and the trail of money he reportedly gave cardinals raises profound ethical questions about how money circulates in the Vatican.

In an *NCR* investigation that began last July, encompassing dozens of interviews in Rome, Mexico City and several U.S. cities, what emerges is the saga of a man who ingratiated himself with Vatican officials, including some of those in charge of offices that should have investigated him, as he dispensed thousands of dollars in cash and largesse.

Maciel built his base by cultivating wealthy patrons, particularly widows, starting in his native Mexico in the 1940s. Even as he was trailed by pedophilia accusations, Maciel attracted large numbers of seminarians in an era of dwindling vocations. In 1994 Pope John Paul II heralded him as "an efficacious guide to youth." John Paul continued praising Maciel after a 1997 *Hartford Courant* investigation by Gerald Renner and this writer exposed Maciel's drug habits and abuse of seminarians. In 1998, eight ex-Legionaries filed a canon law case to prosecute him in then-Cardinal Joseph Ratzinger's tribunal. For the next six years, Maciel had the staunch support of three pivotal figures: Sodano; Cardinal Eduardo Martínez Somalo, prefect of the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life; and Msgr. Stanislaw Dziwisz, the Polish secretary of John Paul. During those years, Sodano pressured Ratzinger not to prosecute Maciel, as *NCR* previously reported. Ratzinger told a Mexican bishop that the Maciel case was a "delicate" matter and questioned whether it would be "prudent" to prosecute at that time.

In 2004, John Paul -- ignoring the canon law charges against Maciel -- honored him in a Vatican ceremony in which he entrusted the Legion with the administration of Jerusalem's Notre Dame Center, an education and conference facility. The following week, Ratzinger took it on himself to authorize an investigation of Maciel.

John Paul's support gave Maciel credibility as he moved with seamless ease among the ultra-wealthy. At a 2004 fundraiser in New York, a video cameraman filmed him running his fingers down the tuxedo lapel of the Mexican billionaire Carlos Slim, a major Legion supporter. Besides donations, Legion schools in Mexico with high tuitions and low salaries subsidized the operations in Rome, say men familiar with the order's finances.

As questions swirl about how Maciel misled so many people, his ability to attract the powerful and influential is beyond dispute. Legion supporters ranged from Steve McEveety, producer of Mel Gibson's "The Passion of the Christ" (Legion priests advised on the film), to Thomas Monaghan, founder of Domino's Pizza and Ave Maria University in Florida. Others who supported the Legion include former Florida Gov. Jeb Bush and former Pennsylvania Sen. Rick Santorum, who spoke at Legion conferences; Spanish opera singer Placido Domingo, who performed at a fundraiser; and the late Fr. Richard John Neuhaus, editor of *First Things*, who wrote that he believed with "moral certainty" that the charges against Maciel were "false and malicious."

Harvard Law Professor and former U.S. ambassador to the Vatican Mary Ann Glendon taught at Regina Apostolorum Athenaeum, the Legion's university in Rome, and advised in the planning that led to the order's first university in America, University of Sacramento, Calif. In a 2002 letter for the Legion Web site she scoffed at the allegations against him and praised Maciel's "radiant holiness" and "the success of Regnum Christi [the order's lay wing] and the Legionaries of Christ in advancing the New Evangelization." Author and conservative activist George Weigel also endorsed the Legion in 2002 on its Web site: "If Fr. Maciel and his charism as a founder are to be judged by the fruits of this work, those fruits are most impressive indeed." Weigel has since called on the Vatican to investigate the order.

CNN commentator William Bennett spoke at Legion gatherings and also said: "I am fortunate enough to know and trust the priests of the Legionaries of Christ. ... The flourishing of the Legionaries is a cause for hope in a time of much darkness." Former CNN religion correspondent Delia Gallagher spoke at a Legion fundraiser, and William Donohue, president of the New York-based Catholic League for Religious and Civil Rights, defended Maciel in a letter to the *Hartford Courant*, after a 1997 article that exposed Maciel's history of pedophilia.

Two Legion priests are TV news celebrities: Jonathan Morris on FOX, and Tom Williams, a theology professor at the Legion university in Rome, for NBC during Katie Couric's coverage of the 2005 conclave and again with Couric at CBS.

Consequences came late

In April 2005, Ratzinger was elected pope. In 2006, as Benedict, he banished Maciel from ministry to a "life of prayer and penitence." Maciel left Rome in disgrace, though the Legionaries mounted a defense of his innocence. In the last week of January 2008, Maciel's 21-year-old daughter and her mother reportedly traveled from Spain to the Miami hospital where he lay dying. That pleased him, while jarring several Legionaries; but the women did not go on to Mexico for the funeral. His three sons and their mother in Mexico avoided the funeral too. His chosen Legion successors gathered in

his remote hometown, Cotija de la Paz, for burial at a family crypt, far from his previously designated tomb at Rome's Our Lady of Guadalupe Basilica, which he built in the 1950s.

Besides Fichter, who has a parish in New Jersey, two priests still serving the church who left the Legion several years ago drew on detailed knowledge of Maciel's financial practices in lengthy interviews, answering questions in continuing telephone calls and e-mails. These priests -- and two priests in Rome who are members of the Legion -- spoke on background, fearing repercussions to their careers were they to be identified.

This story also relies on international press accounts, works by Spanish and Mexican researchers, and attorneys who are piecing together information on Maciel's financial strategy and his families. *NCR* made repeated efforts to seek comment from the three cardinals who allegedly received substantial payments under Maciel's auspices, by speaking with Vatican spokesman Fr. Federico Lombardi on the telephone and via follow-up e-mails. Besides calls to the residences of the two cardinals in Rome, the paper made an extensive effort to contact now-Cardinal Dziwisz, in Krakow, Poland. Iowana Hoffman, a Polish journalist in New York, translated a letter with questions for the cardinal, faxed it to Dziwisz's press secretary, but was told that the cardinal "does not have time for an interview."

Sodano, the former secretary of state and now dean of the College of Cardinals, and Martínez Somalo, former papal chamberlain, did not respond to messages left with Lombardi. A receptionist who answered Sodano's residential number said to call the Vatican. The woman answering Martínez Somalo's phone, when asked in Spanish if he would speak with a journalist, said emphatically, "*No entrevista!*" -- "No interview."

Had Sodano, Martínez Somalo and Dziwisz responded, the cardinals might have answered one question that hovers over this baroque financial drama: How do Vatican officials decide what to report, and to whom, if they are given large sums of money? The Vatican has no constitution or statutes that would make such transactions illegal. But those familiar with the strategy say it was Maciel's goal to insulate himself from the Vatican's archaic system of secret tribunals by making friends with men in power. For most of his life, it worked.

Making friends in the right places

The Vatican office with the greatest potential to derail Maciel's career before 2001 -- the year that Ratzinger persuaded John Paul to consolidate authority of abuse investigations in his office -- was the Congregation for Religious, which oversaw religious orders such as the Dominicans, Franciscans and Legionaries, among many others.

According to two former Legionaries who spent years in Rome, Maciel paid for the renovation of the residence in Rome for the Argentine cardinal who was prefect of religious from 1976 to 1983, the late Eduardo Francisco Pironio. "That's a pretty big resource," explains one priest, who said the Legion's work on the residence was expensive, and widely known at upper levels of the order. "Pironio got his arm twisted to sign the Legion constitution."

The Legion constitution included the highly controversial Private Vows, by which each Legionary swore never to speak ill of Maciel, or the superiors, and to report to them anyone who uttered criticism. The vows basically rewarded spying as an expression of faith, and cemented the Legionaries' lockstep obedience to the founder. The vows were Maciel's way of deflecting scrutiny as a pedophile. But cardinals on the consultors' board at Congregation for Religious balked on granting approval. "Therefore, Maciel went to the pope through Msgr. Dziwisz," said the priest. "Two weeks later Pironio signed it."

Dziwisz was John Paul's closest confidante, a Pole who had a bedroom in the private quarters of the Apostolic Palace. Maciel spent years cultivating Dziwisz's support. Under Maciel, the Legion steered streams of money to Dziwisz in his function as gatekeeper for the pope's private Masses in the Apostolic Palace. Attending Mass in the small chapel was a rare privilege for the occasional head of state, like British Prime Minister Tony Blair and his family. "Mass would start at 7 a.m., and there was always someone in attendance: laypeople, or priests, or groups of bishops," Dziwisz wrote in a 2008 memoir, *A Life With Karol: My Forty-Year Friendship With the Man Who Became Pope*.

"When the guests came in (there were never more than 50)," Dziwisz wrote, "they often found the pope kneeling in prayer with his eyes closed, in a state of total abandonment, almost of ecstasy, completely unaware of who was entering the chapel. ... For the laypeople, it was a great spiritual experience. The Holy Father attached extreme importance to the presence of the lay faithful."

One of the ex-Legionaries in Rome told *NCR* that a Mexican family in 1997 gave Dziwisz \$50,000 upon attending Mass. "We arranged things like that," he said of his role as go-between. Did John Paul know about the funds? Only Dziwisz would know. Given the pope's ascetic lifestyle and accounts of his charitable giving, the funds could have gone to a deserving cause. Dziwisz's book says nothing of donations and contains no mention of Maciel or the Legion. The priest who arranged for the Mexican family to attend Mass worried, in hindsight, about the frequency with which Legionaries facilitated funds to Dziwisz.

"This happened all the time with Dziwisz," said a second ex-Legionary, who was informed of the transactions. Fr. Alvaro Corcuera, who would succeed Maciel as director general in 2004, and one or two other Legionaries "would go up to see Dziwisz on the third floor. They were welcomed. They were known within the household."

Struggling to give context to the donations, this cleric continued: "You're saying these laypeople are good and fervent, it's good for them to meet the pope. The expression is *opera carita* -- 'We're making an offering for your works of charity.' That's the way it's done. In fact you don't know where the money's going." He paused. "It's an elegant way of giving a bribe." Recalling those events, he spoke of what made him leave the Legion. "I woke up and asked: Am I giving my life to serve God, or one man who had his problems? It was not worth consecrating myself to Maciel."

What's a bribe?

In terms of legal reality, does "an elegant way of giving a bribe" add up to bribery? The money from Maciel was given to heads of congregations in the early 1990s and the newspaper exposure of Maciel did not occur until 1997, and the canon law case in 1998.

Further, such exchanges are not considered bribes in the view of Nicholas Cafardi, a prominent canon lawyer and the dean emeritus of Duquesne University Law School in Pittsburgh. Cafardi, who has done work as a legal consultant for many bishops, responded to a general question about large donations to priests or church officials in the Vatican.

Under church law (canon 1302), a large financial gift to an official in Rome "would qualify as a pious cause," explains Cafardi. He spoke in broad terms, saying that such funds should be reported to the cardinal-vicar for Rome. An expensive gift, like a car, need not be reported. "That's how I read the law. I know of no exceptions. Cardinals do have to report gifts for pious causes. If funds are given for the official's personal charity, that is not a pious cause and need not be reported." Because the cardinals did not respond to interview requests, *NCR* has been unable to determine whether they reported to Vatican officials the money they allegedly received from the Legion.

"Maciel wanted to buy power," said the priest who facilitated the Mexican family's *opera carita* to Dziwisz. He did not use the word bribery, but in explaining why he left the Legion, morality was at issue. "It got to a breaking point for me [over] a culture of lying [within the order]. The superiors know they're lying and they know that you know," he said. "They lie about money, where it comes from, where it goes, how it's given."

When Martínez Somalo, a Spaniard, became head of the congregation overseeing religious in 1994, Maciel dispatched this priest to Martínez Somalo's home. The young priest carried an envelope thick with cash. "I didn't bat an eye," he recalled. "I went up to his apartment, handed him the envelope, said goodbye. ... It was a way of making friends, insuring certain help if it were needed, oiling the cogs." Martínez Somalo did not respond to *NCR* interview requests.



Fr. Marcial Maciel Degollado, wearing glasses at center left, is pictured with young Legion of Christ students in this photo believed to be taken in Mexico in the mid-1940s. (CNS photo)

Glenn Favreau, a Legionary in Rome from 1990 to 1997, and today an attorney in Washington, D.C., recalled: "Martínez Somalo was talked about a lot in the Legion, always in the context of 'our superior' because he was our friend. *Un amigo de Legion*." Favreau, who knew nothing of the

donation to Martínez Somalo, continued: "There were cardinals who weren't *amigos*. They wouldn't call them enemies, but everyone knew who they were. Pio Laghi did not like the Legion." Cardinal Laghi, former papal nuncio to the United States, was then prefect of the Congregation for Catholic Education.

Martínez Somalo's office took a new name: Congregation for Institutes of Consecrated Life and Societies of Apostolic Life. But the job description stayed the same. From 1994 to 2004, the Spanish cardinal's duties included investigating any complaints about religious orders or their leaders.

In the files of that congregation, according to several former Legionaries, sat letters that dated back many years, accusing Maciel of abusing seminarians. When the wrenching accounts of nine seminary-victims of Maciel made news in the 1997 *Hartford Courant*, Martínez Somalo did nothing. That was the reaction throughout the Roman curia. John Paul named Martínez Somalo to the post of *carmelango*, or chamberlain, the official in charge of the conclave when a pope is elected. Today, the cardinal in charge of the congregation that oversees religious orders is Franc Rodé. He lavished praise on Maciel, the Legion and its lay wing, Regnum Christi, for years.

One cardinal who rebuffed a Legion financial gift was Joseph Ratzinger. In 1997 he gave a lecture on theology to Legionaries. When a Legionary handed him an envelope, saying it was for his charitable use, Ratzinger refused. "He was tough as nails in a very cordial way," a witness said.

Maciel's modus operandi

Maciel traveled incessantly, drawing funds from Legion centers in Mexico, Rome and the United States. Certain ex-Legionaries with knowledge of the order's finances believe that Maciel constantly drew from Legion coffers to subsidize his families.

For years Maciel had Legion priests dole out envelopes with cash and donate gifts to officials in the curia. In the days leading up to Christmas, Legion seminarians spent hours packaging the baskets with expensive bottles of wine, rare brandy, and cured Spanish hams that alone cost upward of \$1,000 each. Priests involved in the gifts and larger cash exchanges say that in hindsight they view Maciel's strategy as akin to an insurance policy, to protect himself should he be exposed and to position the Legion as an elite presence in the workings of the Vatican.

Fichter, the former Legion member, is today pastor of Sacred Heart Parish in Haworth, N.J. He has been a diocesan priest for a decade, and serves in the Newark archdiocese. He coordinated the Legion's administrative office in Rome from February 1998 until October 2000. "When Fr. Maciel would leave Rome it was my duty to supply him with \$10,000 in cash -- \$5,000 in American dollars, and the other half in the currency of the country to which he was traveling," explained Fichter. "I would be informed by one of his assistants that he was leaving and I would have to prepare the funds for him. I never questioned that he was not using it for good and noble purposes. It was a routine part of my job. He was so totally above reproach that I felt honored to have that role. He did not submit any receipts and I would have not dared to ask him for a receipt."

Fichter was reluctant to be interviewed, expressing concern that his views be fully reflected. "As Legionaries our norms concerning the use of money were very restricted," he began. "If I went on an outing I was given \$20 and if I had a pizza I'd return the \$15 to my superior with a receipt. The sad thing is that we were so naive. We were scrupulously trying to live our vow of poverty and yet never questioned [Maciel's] own fidelity to the same. "So many of my old classmates are still in the Legion and I feel that they are going through such a hard time right now. I don't want to have my words misconstrued. ... Maciel hoodwinked everyone. In hindsight I regret that I and so many others were so gullible. Thankfully, for me that was many years ago."

Since earning his doctorate in sociology from Rutgers University, Fichter has worked as a research associate for the Center for Applied Research in the Apostolate (CARA) at Georgetown University in Washington. "I am very happy as a pastor and in the research work I am doing for the good of the church. At this stage of my life, having collaborated with the Vatican investigation of the Legion, I pray each day for those who are still Legionaries. If I can help them in any way I will."

Justice delayed

After the ex-Legion victims filed a canonical case in 1998 against Maciel in the Congregation for the Doctrine of the Faith, Sodano as secretary of state -- essentially, the Vatican prime minister -- pressured Ratzinger, as the congregation's prefect, to halt the proceeding. As *NCR* reported in 2001, José Barba, a college professor in Mexico City and ex-Legionary who filed the 1998 case in Ratzinger's office, learned from the canonist handling the case, Martha Wegan in Rome, of Sodano's role.

"Sodano came over with his entire family, 200 of them, for a big meal when he was named cardinal," recalled Favreau. "And we fed them all. When he became secretary of state there was another celebration. He'd come over for special events, like the groundbreaking with a golden shovel for the House of Higher Studies. And a dinner after that."

The intervention of a high Vatican official in a tribunal case illustrates the fragile nature of the system, and in the Maciel case, how a guilty man escaped punishment for years. "Cardinal Sodano was the cheerleader for the Legion," said one of the ex-Legionaries. "He'd come give a talk at Christmas and they'd give him \$10,000." Another priest recalled a \$5,000 donation to Sodano.

But in December 2004, with John Paul's health deteriorating by the day, Ratzinger broke with Sodano and ordered a canon lawyer on his staff, Msgr. Charles Scicluna, to investigate. Two years later, as Benedict, he approved the order that Maciel abandon ministry for a "life of penitence and prayer." Maciel had "more than 20 but less than 100 victims," an unnamed Vatican official told *NCR*'s John Allen at the time. The congregation cited Maciel's age in opting against a full trial.

An influential Vatican official told *NCR* that Sodano insisted on softening the language of the Vatican communiqué -- to praise the Legion and its 60,000-member lay wing, Regnum Christi -- despite the order's nine-year Web site campaign denouncing the seminary victims. The Legion's damage control rolled into a new phase with its statement that compared Maciel to Christ for refusing to defend

himself, and accepting his "new cross" with "tranquility of conscience." Maciel left Rome, the scandal seemingly over. Internally, the Legion insisted to its members and followers that Maciel was innocent.

In 2009, a year after Maciel's death, the Legion disclosed its surprise on discovering that he had a daughter. The news jolted the order and its lay arm, Regnum Christi. Yet in an organization built on a cult of personality, the long praise from John Paul suggested a legacy of virtue in Maciel. Legion officials scrambled to suppress skepticism.

Two Legion priests told *NCR* in July that seminarians in Rome were still being taught about Maciel's virtuous life. "They are being brainwashed, as if nothing happened," said a Legionary, sitting on a bench near Rome's Tiber River. Thanks to Sodano's intervention, the order clung to a shaky defense in arguing that the Vatican never specifically said that Maciel abused anyone.

How much Legion officials knew about Maciel's *other* life -- the daughter with her mother in Madrid and three sons with their mother in Mexico -- is a pivotal issue in the Vatican inquiry underway. How much money did Maciel use to support his families? How much did he siphon off for other purposes behind the guise of a religious charity?

Behind these questions loom others about money in the Vatican. Are envelopes with thousands of dollars in cash given to cardinals when they say Mass, give talks or have dinner in a religious house mere donations? The Legion of Christ raises money as a charity. How does it record such outlays? Does anyone in the Vatican have access to Legion financial records? When Dziwisz became a bishop in 1998, the Legion covered the costs of his reception at its complex in Rome. "Dziwisz helped the Legion in many ways," said a priest who facilitated payments. "He convinced the pope to celebrate the 50th anniversary of the Legion."

In a book on Maciel published in Spain, journalist Alfonso Torres Robles calls an event on Jan. 3, 1991, "one of the most powerful demonstrations of strength by the Legion ... at St. Peter's Basilica in Rome, when John Paul II ordained 60 Legionaries into the priesthood, in the presence of 7,000 Regnum Christi members from different countries, 15 cardinals, 52 bishops and many millionaire benefactors."

Maciel had the event filmed and a sequence used in a video the Legion sold until 2006. John Paul was a strategic image in Legion mass mailings and the video shown to potential donors when seminarians accompanied priests to their homes. The Legion no longer circulates the video.



The Legion has a presence in 23 countries, with dozens of elite prep schools, religious formation houses, and several universities.

APPENDIX THREE

**SUGGESTED LIST OF EMINENT
CATHOLICS' TASK FORCE**

**SUGGESTED LIST of MEMBERS of the EMINENT
CATHOLICS' TASK FORCE**

Judge Frank Vincent, Convenor and chair

Professor Joseph Camilleri, LaTrobe University

Bishop Peter Connors, Emeritus Bishop of Ballarat

Mr Frank Costa, Geelong businessman

Professor Michael Doyle, emeritus Dean of Education, Australian Catholic University

Hon. Tim Fisher, formerly deputy Prime Minister and Australian Ambassador to the Holy See, and patron of the Melbourne Archdiocesan Priests Support and Education Fund

Mrs Diana Ruzzene Grollo

Rev Fr Eric Hodgens, emeritus pastor of St. Bede's, North Balwyn

Ms Maria Kirkwood, Director, Sale Catholic Education Office

Dr Rosemary Lester, Chief Health Officer of Victoria

Professor Gabrielle McMullin, formerly Deputy Vice-Chancellor, Australian Catholic University

Mr James Merlino. Victorian Parliamentarian

Lady Lyn Nossal

Mr Michael O'Brien, formerly Deputy Director, Legal Aid Commission of Victoria

Dr Stephen Parnis. President, Australian Medical Association (Victoria)

Ms Susan Pascoe, formerly director, Melbourne Catholic Education Office, PSB Commissioner and patron of the Melbourne Archdiocesan Priests Support and Education Fund

Mr Andrew Robb, Federal Parliamentarian

APPENDIX FOUR

**SUGGESTED STRATEGY for
ADDRESSING CASES OF FALSE
ACCUSATION**

SUGGESTED STRATEGY for ADDRESSING CASES OF FALSE ACCUSATION

Falsely accused priests, in Marie Keenan's view, are the "collateral damage" in the clerical sexual abuse crisis. Her suggested strategy is based on her address "Challenges for Priestly Ministry in Ireland Today" delivered at the annual general meeting of the Association of Catholic Priests in Ireland in October 2011. The text is available on their website. The elements of the strategy are:

- (a) All investigations be carried out by the policing and criminal justice authorities in association with health authorities, as appropriate
- (b) No public announcement, not least from the parish pulpit where he has served, in cases where a priest is protesting his innocence, be made under any circumstances
- (c) From the moment he stands aside, the priest receives immediate professional care and support
- (d) That from the moment he stands aside he is carefully monitored and given meaningful duties and activities
- (e) After his exoneration he is carefully listened to by the bishop and other significant others to determine his needs, including the option for taking legal action
- (f) His family throughout the process are informed and offered professional counselling in dealing with the unfolding events